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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 2087**

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**Introduced by Assembly Member Levine**

February 17, 2016

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An act to add Chapter 9 (commencing with Section 1850) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2087, as amended, Levine. Regional conservation ~~frameworks~~. *investment strategies*.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency. Under existing law, the department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the department may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated. Existing law prohibits an entity from substantially diverting or obstructing the

natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the department of that activity, and entering into a lake or streambed alteration agreement if required by the department to protect fish and wildlife resources.

This bill would authorize the department, or any other public agency, to propose a regional conservation ~~framework~~, *investment strategy, to be developed* in consultation with applicable local agencies that have land use authority, for the purpose of informing *science-based* conservation actions and habitat enhancement actions that would advance the conservation of focal species and providing voluntary *nonbinding* guidance for various activities. The bill would require the ~~framework~~ *strategy* to contain specified information and would authorize the ~~framework~~ *strategy* to include a regional conservation assessment proposed by the department or any other public agency and approved by the department. The bill would authorize the department to approve a regional conservation ~~framework~~, *or approve the framework with amendments, investment strategy or amended strategy* for an initial period of up to 10 years after a public meeting and a public comment period regarding the proposed ~~framework~~ *strategy or amended strategy* have been held and after it finds that the ~~framework~~ *strategy* meets certain requirements. The bill would authorize a conservation action and a habitat enhancement action that measurably advance the conservation objectives of an approved ~~framework~~ *strategy* and that meet other specified requirements to be used to create mitigation credits. The bill would authorize these mitigation credits to be used to fulfill compensatory mitigation requirements established under any state or federal environmental law, as determined by the applicable local, state, or federal regulatory agency, including compensatory mitigation requirements to compensate for take or other adverse impacts of activities authorized pursuant to the California Endangered Species Act, to reduce adverse impacts to fish or wildlife resources, or both, from activities authorized pursuant to a lake or streambed alteration agreement to less than substantial, or to mitigate significant effects on the environment pursuant to the California Environmental Quality Act. To create these mitigation credits, the bill would require a person or entity to enter into a mitigation credit agreement with the department that meets specified requirements. The bill would prohibit the release of mitigation credits for use, sale, or transfer under a mitigation credit

agreement unless the department approves the release in accordance with certain requirements. The bill would ~~authorize~~ *require* the department to collect fees *or other compensation* from a person or entity that proposes to enter into a mitigation credit agreement, and from a public agency that proposes a ~~framework~~, *strategy or a regional conservation assessment*, to pay for all or a portion of the department's costs relating to the mitigation credit agreement, proposed ~~framework~~, *strategy*, or proposed regional conservation assessment. *The bill would authorize the department to partner with the California Infrastructure and Economic Development Bank to finance the development of advance mitigation credits if needed.* The bill would authorize the department to adopt guidelines and criteria to aid in the implementation of these provisions and would exempt the adoption of these guidelines and criteria from the Administrative Procedure Act. The bill would require the department to submit a report regarding the implementation of these provisions to the Legislature on or before January 1, 2020. The bill would prohibit the department from approving *more than 15 regional conservation investment strategies before January 1, 2020, and would prohibit the department from approving* a regional conservation ~~framework~~ *investment strategy* or regional conservation assessment on or after January 1, 2020, and from entering into a mitigation credit agreement on or after January 1, 2020.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The purpose of Chapter 9 (commencing with*
- 2     *Section 1850) of Division 2 of the Fish and Game Code is to create*
- 3     *a pilot regional conservation investment strategy program through*
- 4     *January 1, 2020, to identify and prioritize regional conservation*
- 5     *through an open public process and using a science-based*
- 6     *approach while also encouraging investments in conservation*
- 7     *through advance mitigation.*
- 8     ~~SECTION 1.~~
- 9     *SEC. 2. Chapter 9 (commencing with Section 1850) is added*
- 10    *to Division 2 of the Fish and Game Code, to read:*

1 CHAPTER 9. ~~REGIONAL CONSERVATION FRAMEWORKS~~ ADVANCE  
2 MITIGATION AND REGIONAL CONSERVATION INVESTMENT  
3 STRATEGIES  
4

5 1850. (a) The Legislature finds and declares that it would be  
6 beneficial to identify species and habitat conservation initiatives  
7 at a regional scale, including actions needed to address the impacts  
8 of climate change and other wildlife stressors, in order to guide  
9 voluntary investments in conservation, ~~infrastructure planning,~~  
10 ~~infrastructure,~~ sustainable communities strategies, and  
11 compensatory mitigation for impacts to ecological resources,  
12 including impacts to threatened and endangered species, other  
13 sensitive species, natural communities, ecological processes, and  
14 wildlife corridors.

15 (b) The purpose of this chapter is to promote the voluntary  
16 conservation of natural resources, including biodiversity and  
17 ecological processes, and to enhance resiliency to climate change  
18 and other threats. In order to further this goal, it is the policy of  
19 the state to encourage voluntary mechanisms to conserve biological  
20 and other ecological resources and to identify conservation actions,  
21 including actions needed to promote resiliency to the impacts of  
22 climate change and other stressors to species and habitat.

23 (c) It is further the policy of the state to encourage voluntary  
24 mechanisms to identify and implement advance mitigation actions  
25 that do the following:

26 (1) Can be used to compensate for project impacts, including,  
27 but not limited to, infrastructure and renewable energy projects,  
28 more efficiently.

29 (2) Are effective ecologically.

30 (3) Will help to conserve regionally important biological and  
31 other ecological resources.

32 (d) In enacting this chapter, it is the intent of the Legislature to  
33 promote *science-based* conservation ~~planning~~ that identifies species  
34 and habitat conservation needs, including actions needed to  
35 promote resiliency to the impacts of climate change and other  
36 stressors. It is further the intent of the Legislature to create  
37 nonregulatory mechanisms to guide investments in conservation,  
38 ~~infrastructure and land use planning,~~ *infrastructure,* and  
39 compensatory mitigation for impacts to natural resources, including  
40 impacts to threatened and endangered species, other sensitive

1 species, natural communities, ecological processes, and  
2 connectivity.

3 (e) In enacting this chapter, it is not the intent of the Legislature  
4 ~~to prescribe or prohibit land uses, to regulate the use of land,~~  
5 establish land use designations, or to ~~affect~~ *affect, limit, or restrict*  
6 the land use authority of any public agency.

7 (f) *Further, in enacting this chapter, it is not the intent of the*  
8 *Legislature that an approved regional conservation investment*  
9 *strategy would be binding on independent public agency action*  
10 *within the strategy's geographic scope.*

11 1851. For purposes of this chapter:

12 (a) "Areas of Conservation Emphasis" means the biodiversity  
13 analysis completed by the department in 2010, or the latest update  
14 of that analysis.

15 (b) "Compensatory mitigation" means actions taken to fulfill,  
16 in whole or in part, mitigation requirements under state or federal  
17 law or a court mandate.

18 (c) "Conservation action" means an action to preserve or to  
19 restore ecological resources, including habitat, natural  
20 communities, ecological processes, and wildlife corridors, to  
21 protect those resources permanently, and to provide for their  
22 perpetual management, so as to help to achieve one or more  
23 biological goals and objectives for one or more focal species.  
24 Conservation actions may include, but are not limited to, actions  
25 to offset impacts to focal species.

26 (d) "Conservation easement" means a perpetual conservation  
27 easement that complies with Chapter 4 (commencing with Section  
28 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

29 (e) "Focal species" means sensitive species within a regional  
30 conservation ~~framework investment strategy~~ area that are analyzed  
31 in the ~~framework strategy~~ and will benefit from conservation  
32 actions and habitat enhancement actions set forth in the ~~framework~~  
33 *strategy*.

34 (f) "Habitat enhancement action" means an action to improve  
35 the quality of wildlife habitat, or to address risks or stressors to  
36 wildlife, that has long-term durability but does not involve land  
37 acquisition or the permanent protection of habitat, such as  
38 improving in-stream flows to benefit fish species, enhancing habitat  
39 connectivity, or invasive species control or eradication.

(g) “Performance-based milestones” means specifically identified steps in the implementation of a conservation action or habitat enhancement action, such as site protection, initiating implementation, completing implementation, or achieving performance standards.

(h) “Performance standards” means observable or measurable physical or biological attributes that are used to determine if a conservation action or habitat enhancement action has met its objectives.

(i) “Permanently protect” means doing both of the following:

(1) Recording a conservation easement, in a form approved in advance in writing by the department, or establishing perpetual protection of land in a manner ~~substantially similar to a conservation easement~~ *consistent with draft or approved natural community conservation plans within the area of the applicable regional conservation investment strategy* and approved in advance in writing by the department, that prevents development, prohibits inconsistent uses, and ensures that habitat for focal species is maintained.

(2) Providing secure, perpetual funding for management of the land, monitoring, and legal enforcement.

(j) “Regional conservation assessment” means information and analyses that document the important species, ecosystems, ecosystem processes, protected areas, and linkages within an ecoregion to provide the appropriate context for prioritized conservation strategies and actions. Those assessments include information critical to the identification of areas with greatest probability for long-term ecosystem conservation success incorporating cobenefits of ecosystem services, such as carbon, water, and agricultural lands. A regional conservation assessment may be used to provide context at an ecoregional or subcoregional scale to assist with the development of a regional conservation ~~framework~~ *investment strategy*.

(k) “Regional conservation ~~framework~~ *investment strategy*” means information and analyses prepared pursuant to this chapter to inform conservation actions and habitat enhancement actions that would advance the conservation of focal species, habitat, and other natural resources and to provide *nonbinding* voluntary guidance for the identification of wildlife and habitat conservation priorities, investments in ecological resource conservation,

~~infrastructure planning~~, identification of conservation priorities  
~~for land use planning~~, *priorities*, or identification of priority  
locations for compensatory mitigation for impacts to species and  
natural resources. Regional conservation ~~frameworks~~ *investment*  
*strategies are intended to provide scientific information for the*  
*consideration of public agencies and* are voluntary and do not  
create, modify, or impose regulatory requirements or standards,  
~~prescribe or prohibit land uses~~, *regulate the use of land*, establish  
land use designations, or affect the land use authority of any public  
agency. The preparation and use of regional conservation  
~~frameworks~~ *investment strategies* for this guidance is voluntary.

(l) “Regional level” means the geographic scale of relevant  
ecologically defined units such as ecoregions.

(m) “Sensitive species” means any special status species  
identified by a state or federal agency.

1852. (a) The department may approve a regional conservation  
~~framework~~ *investment strategy* pursuant to this chapter. A regional  
conservation ~~framework~~ *investment strategy* may be proposed by  
the department or any other public agency, *and shall be developed*  
in consultation with local agencies that have land use authority  
within the geographic ~~scope~~ *area* of the regional conservation  
~~framework~~. *investment strategy*.

(b) The purpose of a regional conservation ~~framework~~  
*investment strategy* shall be to inform *science-based* conservation  
actions and habitat enhancement actions that would advance the  
conservation of focal species, including the ecological processes,  
natural communities, and habitat connectivity upon which those  
focal species depend, and to provide *nonbinding* voluntary  
guidance for one or more of the following:

(1) Identification of wildlife and habitat conservation priorities,  
including actions needed to address the impacts of climate change  
and other wildlife stressors.

(2) Investments in resource conservation.

~~(3) Infrastructure planning.~~

~~(4) Identification of conservation priorities for land use planning.~~

~~(3) Infrastructure.~~

~~(5)~~

(4) Identification of priority areas for compensatory mitigation  
for impacts to species and natural resources.

(c) A regional conservation ~~framework~~ *investment strategy* shall include all of the following:

(1) An explanation of the conservation purpose of and need for the ~~framework~~ *strategy*.

(2) The geographic area of the ~~framework~~ *strategy* and rationale for the selection of the area, together with a description of the surrounding ecoregions and any adjacent protected habitat areas or linkages that provide relevant context for the development of the ~~framework~~ *strategy*.

(3) The focal species included in, and their current known or estimated status within, the ~~framework~~ *strategy*.

(4) Important resource conservation elements within the ~~framework~~ *strategy* area, including, but not limited to, important ecological resources and processes, natural communities, habitat, habitat connectivity, and existing protected areas, and an explanation of the criteria, data, and methods used to identify those important conservation elements.

(5) A summary of historic, current, and projected future stressors and pressures in the ~~framework~~ *area strategy area, including climate change vulnerability*, on the focal species, habitat, and other natural resources, as identified in the best available scientific information, including, but not limited to, the State Wildlife Action Plan.

(6) Major water, transportation and transmission infrastructure facilities, urban development areas, and ~~county and city~~ *county, and city and county* general plan designations in the ~~framework~~ *strategy* area.

(7) Conservation goals and measurable objectives for the focal species and important conservation elements identified in the ~~framework~~ *strategy* that address or respond to the identified stressors and pressures on focal species.

(8) Conservation actions, including a description of the general amounts and types of habitat that, if preserved or restored and permanently protected, could achieve the conservation goals and objectives, and a description of how the conservation actions and habitat enhancement actions were prioritized and selected in relation to the conservation goals and objectives.

(9) ~~An explanation of how the framework~~ *Provisions ensuring that the strategy is consistent with or and complements any draft or approved natural community conservation plan, plan or federal*



1 ~~habitat conservation plan, state or federal recovery plan, or other~~  
2 ~~approved conservation strategy plan~~ that overlaps with the  
3 ~~framework strategy~~ area.

4 *(10) An explanation of whether and to what extent the strategy*  
5 *is consistent with any previously approved strategy or amended*  
6 *strategy, state or federal recovery plan, or other state or federal*  
7 *approved conservation strategy that overlaps with the strategy*  
8 *area.*

9 ~~(10)~~

10 *(11) A summary of mitigation banks and conservation banks*  
11 *approved by the department or the United States Fish and Wildlife*  
12 *Service that are located within the framework strategy area or*  
13 *whose service area overlaps with the framework strategy area.*

14 ~~(11)~~

15 *(12) A description of how the framework's strategy's*  
16 *conservation goals and objectives provide for adaptation*  
17 *opportunities against the effects of climate change for the*  
18 *framework's strategy's focal species.*

19 ~~(12)~~

20 *(13) Incorporation and reliance on, and citation of, the best*  
21 *available scientific information regarding the framework strategy*  
22 *area and the surrounding ecoregion, including a brief description*  
23 *of gaps in relevant scientific information, and use of standard or*  
24 *prevalent vegetation classifications and standard ecoregional*  
25 *classifications for terrestrial and aquatic data to enable and promote*  
26 *consistency among regional conservation frameworks investment*  
27 *strategies throughout California.*

28 *(d) A regional conservation investment strategy shall compile*  
29 *input and summary priority data in a consistent format that could*  
30 *be uploaded for interactive use in an Internet Web portal and that*  
31 *would allow stakeholders to generate queries of regional*  
32 *conservation values within the strategy area.*

33 *(e) In addition to considering the potential to advance the*  
34 *conservation of focal species, regional conservation investment*  
35 *strategies shall consider all of the following:*

36 *(1) The conservation benefits of preserving working lands for*  
37 *agricultural uses.*

38 *(2) Reasonably foreseeable development of infrastructure*  
39 *facilities.*

1 (3) *Reasonably foreseeable projects in the strategy area,*  
2 *including, but not limited to, affordable housing.*

3 (4) *Reasonably foreseeable development for the production of*  
4 *renewable energy.*

5 1853. (a) The department may approve a regional conservation  
6 assessment pursuant to this chapter. A regional conservation  
7 assessment may be proposed by the department or any other public  
8 agency. However, a regional conservation assessment is not  
9 required for department approval of a regional conservation  
10 ~~framework~~ *investment strategy*.

11 (b) If a regional conservation assessment that encompasses the  
12 area of a proposed regional conservation ~~framework~~ *investment*  
13 *strategy* has already been approved by the department, the  
14 ~~framework~~ *strategy* shall explain how *and to what extent* it has  
15 incorporated the assessment information and analysis.

16 (c) A regional conservation assessment shall do all of the  
17 following:

18 (1) Identify and summarize relevant regional pressures and  
19 stressors, including climate change vulnerability, and conservation  
20 priorities, including priority conservation areas and habitat  
21 connectivity values, included in all of the following:

22 (A) Conservation plans, such as the State Wildlife Action Plan  
23 and approved natural community conservation plans.

24 (B) Analyses designed to identify areas of high biological  
25 diversity, such as the Areas of Conservation Emphasis.

26 (C) Analyses designed to identify areas of high value for habitat  
27 connectivity.

28 (2) Identify the best available scientific information and  
29 analyses, including geospatial information regarding the  
30 distribution of species and natural communities.

31 (3) Use spatial analysis to identify ecological relationships  
32 between existing protected areas and priority conservation areas.

33 (4) Use standard or prevalent vegetation classifications and  
34 standard ecoregional classifications for terrestrial and aquatic data  
35 to enable and promote consistency among regional conservation  
36 assessments throughout California.

37 (5) Compile input and summary priority data in a consistent  
38 format that could be uploaded for interactive use in an Internet  
39 Web portal and that would allow stakeholders to generate queries

1 of *regional* conservation values within the ~~framework~~ strategy  
2 area.

3 (6) *Be consistent with draft and approved natural community*  
4 *conservation plans and regional habitat conservation plans, and*  
5 *approved recovery plans within the ecoregion or subecoregion*  
6 *included in the assessment.*

7 (d) (1) A draft regional conservation assessment may be  
8 submitted to the department with a draft regional conservation  
9 ~~framework~~ investment strategy or separately.

10 (2) If submitted with a draft regional conservation ~~framework~~,  
11 investment strategy, the draft regional conservation assessment  
12 shall be included in the review process set forth in subdivision (c)  
13 of Section 1854.

14 (3) If submitted separately, the department shall have 30 days  
15 within which to deem the draft regional conservation assessment  
16 complete or to explain in writing to the public agency submitting  
17 the assessment what is needed to complete the assessment. Within  
18 30 days of deeming a draft regional conservation assessment  
19 complete, the department shall make the draft assessment available  
20 to the public on its Internet Web site for review and comment for  
21 a period of at least 30 days, following which the department may  
22 approve the assessment, approve it with amendments, or disapprove  
23 it.

24 1854. (a) The department may prepare or approve a regional  
25 conservation ~~framework~~, investment strategy, or approve ~~the~~  
26 ~~framework with amendments~~, an amended strategy, for an initial  
27 period of up to 10 years after finding that the ~~framework~~ strategy  
28 meets the requirements of Section 1852. The department may  
29 extend the duration of an approved or amended regional  
30 conservation ~~framework~~ investment strategy for additional periods  
31 of up to 10 years after updating the strategy for new scientific  
32 information and finding that the ~~framework~~ strategy continues to  
33 meet the requirements of Section 1852. For purposes of this  
34 section, an amended strategy means a complete regional  
35 conservation investment strategy prepared by a public agency to  
36 amend substantially and to replace an approved strategy submitted  
37 by the public agency.

38 (b) It is the intent of this chapter to establish requirements that  
39 provide sufficient flexibility to develop each regional conservation

1 ~~framework~~ investment strategy based on the best available  
2 information regarding the ~~framework~~ strategy area.

3 (c) (1) A public agency shall publish notice of its intent to create  
4 a regional conservation investment strategy. This notice shall be  
5 filed with the Governor's Office of Planning and Research and  
6 the county clerk of each county in which the regional conservation  
7 investment strategy is found in part or in whole. If preparation of  
8 a regional conservation investment strategy was initiated before  
9 January 1, 2017, this notice shall not be required.

10 ~~(e)-(1)~~

11 (2) After a draft regional conservation ~~framework~~ investment  
12 strategy or an amendment to a strategy is submitted to the  
13 department for approval, the department shall have 30 days within  
14 which to deem the draft regional conservation ~~framework~~  
15 investment strategy or an amended strategy complete or to explain  
16 in writing to the public agency submitting the ~~framework~~ strategy  
17 or amended strategy what is needed to complete the ~~framework~~.  
18 strategy or amended strategy. Within 30 days of deeming a draft  
19 regional conservation ~~framework~~ investment strategy or amended  
20 strategy complete, the department shall make the draft ~~framework~~  
21 strategy or amended strategy available to the public on its Internet  
22 Web site for review and comment for a period of at least 30 ~~days~~.  
23 days and shall notify any public agency, organization, or individual  
24 who has filed a written request to the department for notices  
25 regarding draft regional conservation strategies.

26 ~~(2)~~

27 (3) A public agency proposing a ~~framework~~ strategy or amended  
28 strategy shall hold a public meeting to allow interested persons  
29 and entities to receive information about the draft regional  
30 conservation ~~framework~~ investment strategy or amended strategy  
31 early in the process of preparing it and to have an adequate  
32 opportunity to provide written and oral comments. The public  
33 meeting shall be held at a location within or near the ~~framework~~  
34 strategy area. If preparation of a regional conservation ~~framework~~  
35 investment strategy was initiated before January 1, 2017, and a  
36 public meeting regarding the ~~framework~~ strategy or amended  
37 strategy that is consistent with the requirements of this section was  
38 held before January 1, 2017, an additional public meeting shall  
39 not be required. If preparation of a regional conservation  
40 ~~framework~~ investment strategy was initiated before January 1,

2017, and a public meeting regarding the ~~framework~~ *strategy* was not held before January 1, 2017, the public meeting required under this section may be held after January 1, 2017, if it is held at least 30 days before the ~~framework~~ *strategy* is submitted to the department for approval.

~~(3)~~

(4) At least 30 days before holding a public meeting to distribute information about the development of a draft regional conservation ~~framework~~, *investment strategy or amended strategy*, a public agency proposing a ~~framework~~ *strategy* shall provide notice of a regional conservation ~~framework~~ *investment strategy or amended strategy* public meeting as follows:

(A) On the public agency's Internet Web site and any relevant LISTSERV.

(B) To each ~~county or city~~ *city, county, and city and county* within or adjacent to the regional conservation ~~framework~~ *investment strategy* area.

(C) To each public agency, organization, or individual who has filed a written request for the ~~notice~~, *notice, including any agency, organization, or individual who has filed a written request to the department for notices of all regional conservation investment strategy public meetings*.

~~(4)~~

(5) At least 60 days before submitting a final regional conservation ~~framework~~ *investment strategy or amended strategy* to the department for approval, the public agency proposing the ~~framework~~ *investment strategy or amended strategy* shall notify the board of supervisors and the city councils in each county within the geographical scope of the ~~framework~~ *strategy* and provide the board of supervisors and the city councils with an opportunity to submit written comments for a period of at least 30 days.

~~(5)~~

(6) After a final regional conservation ~~framework~~ *investment strategy or amended strategy* is submitted to the department for approval, the department shall have 30 days within which to approve the final regional conservation ~~framework~~ *investment strategy or amended strategy* or to explain in writing to the public agency submitting the ~~framework~~ *strategy or amended strategy* what is needed to approve the ~~framework~~, *strategy or amended strategy*.

(d) The department shall make all approved regional conservation ~~frameworks~~, *investment strategies*, including all updates to scientific information and analyses used in a regional conservation ~~framework~~, *investment strategy and any amendments to the strategy* available on its Internet Web site.

(e) The department shall require the use of consistent metrics that incorporate both the area and quality of habitat and other natural resources in relation to a regional conservation ~~framework's~~ *investment strategy's* conservation objectives to measure the net change resulting from the implementation of conservation actions and habitat enhancement actions.

1855. (a) Regional conservation ~~frameworks~~ *investment strategies* shall not affect the authority or discretion of any public agency, ~~except as specifically provided in this chapter.~~ *agency and shall not be binding upon public agencies other than parties to a mitigation credit agreement.* Nothing in this chapter increases or decreases the authority or jurisdiction of the department regarding any land use, species, habitat, area, resource, plan, process, or corridor. *Regional conservation investment strategies are intended to provide scientific information for the consideration of public agencies. Nothing in this chapter requires any public agency, other than a public agency that is party to a mitigation credit agreement, to adopt, implement, or otherwise adhere to a regional conservation investment strategy or a regional conservation assessment.*

(b) The approval or existence of a regional conservation ~~framework~~ *investment strategy* or mitigation credit agreement pursuant to this chapter does not do any of the following:

(1) Modify in any way the standards for issuance of incidental take permits or ~~concurrence~~ *consistency* determinations pursuant to Section 2081 or 2080.1, issuance of take authorizations pursuant to Section 2835, ~~or the issuance of lake or streambed alteration agreements pursuant to Section 1602.~~ *1602, or any other provision of this code or regulations adopted pursuant to this code.*

(2) ~~Establish a presumption~~ *Require a lead agency or responsible agency to determine that there is substantial evidence* under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) ~~that the regional conservation framework provides substantial evidence~~ in connection with any determination of whether a

1 proposed project may or may not result in significant environmental  
2 effects—and does not or in any way limit a lead agency's or  
3 responsible agency's discretion to determine, based on  
4 project-specific information, whether a proposed project may or  
5 may not result in significant environmental effects.

6 (3) Prohibit or authorize any project or project impacts.

7 (4) Create a presumption or guarantee that any proposed project  
8 will be approved or permitted, or that any proposed impact will  
9 be authorized, by any state or local agency.

10 (5) Create a presumption that any proposed project will be  
11 disapproved or prohibited, or that any proposed impact will be  
12 prohibited, by any state or local agency.

13 (6) Alter or affect, or create additional requirements for, the  
14 general plan of the city, county, or city and county, in which it is  
15 located.

16 (7) *Constitute any of the following, for the purposes of the*  
17 *California Environmental Quality Act (Division 13 (commencing*  
18 *with Section 21000) of the Public Resources Code):*

19 (A) *A plan, policy, or regulation adopted for the purpose of*  
20 *avoiding or mitigating an environmental effect.*

21 (B) *A local policy or ordinance protecting biological resources.*

22 (C) *An adopted local, regional, or state habitat conservation*  
23 *plan.*

24 (c) *The department shall not reject biologically appropriate*  
25 *and adequate compensatory mitigation proposed by a project*  
26 *proponent on the basis that the compensatory mitigation is not a*  
27 *conservation action or habitat enhancement identified in a regional*  
28 *conservation investment strategy.*

29 (e)

30 (d) Nothing in this chapter shall require a project proponent  
31 seeking to provide compensatory mitigation pursuant to Section  
32 1602, 2080.1, 2081, or 2835 or the California Environmental  
33 Quality Act (Division 13 (commencing with Section 21000) of  
34 the Public Resources Code) to undertake conservation actions or  
35 habitat enhancement actions identified in a regional conservation  
36 ~~framework; investment strategy~~; implement, contribute to, fund,  
37 or otherwise comply with the actions described in a regional  
38 ~~conservation framework; investment strategy~~; require or otherwise  
39 compel a project proponent to enter into a mitigation credit  
40 agreement; or use or purchase mitigation credits established

1 pursuant to this chapter to satisfy the compensatory mitigation  
2 requirements. *Nothing in this section shall prevent an applicant*  
3 *from proposing mitigation consistent with one or more strategies*  
4 *identified pursuant to this chapter.*

5 (e) *Mitigation credits provided by this chapter shall not be*  
6 *utilized to fund or offset the costs of the design, construction, or*  
7 *mitigation of new Delta conveyance facilities.*

8 1856. (a) A conservation action or habitat enhancement action  
9 that measurably advances the conservation objectives of an  
10 approved regional conservation ~~framework~~ *investment strategy*  
11 may be used to create mitigation credits that can be used to  
12 compensate for impacts to focal species and other species, habitat,  
13 and other natural resources, as provided in this section. The  
14 requirements of this section apply only to the creation of mitigation  
15 credits under mitigation credit agreements pursuant to this section  
16 and do not establish requirements for other forms of compensatory  
17 mitigation.

18 (b) For a conservation action or habitat enhancement action  
19 identified in a regional conservation ~~framework~~ *investment strategy*  
20 to be used to create mitigation credits pursuant to this section, the  
21 regional conservation ~~framework~~ *investment strategy* shall include,  
22 in addition to the requirements of Section 1852, all of the  
23 following:

24 (1) An adaptive management and monitoring strategy for  
25 conserved habitat and other conserved natural resources.

26 (2) A process for updating the scientific information used in the  
27 ~~framework~~, *strategy*, and for tracking the progress of, and  
28 evaluating the effectiveness of, conservation actions and habitat  
29 enhancement actions identified in the ~~framework~~ *strategy*, in  
30 offsetting identified threats to focal species and in achieving the  
31 ~~framework's~~ *strategy's* biological goals and objectives, at least  
32 once every 10 years, until all mitigation credits are used.

33 (3) Identification of a public or private entity that will be  
34 responsible for the updates and evaluation required pursuant to  
35 paragraph (2).

36 (c) A mitigation credit created in accordance with this section  
37 may be used to fulfill, in whole or in part, compensatory mitigation  
38 requirements established under any state or federal environmental  
39 law, as determined by the applicable local, state, or federal  
40 regulatory agency, including, but not limited to, the following:



1 (1) To compensate for take or other adverse impacts of activities  
2 authorized pursuant to Chapter 1.5 (commencing with Section  
3 2050) of Division 3 within the regional conservation ~~framework~~  
4 *investment strategy* area.

5 (2) To reduce adverse impacts to fish or wildlife resources, or  
6 both, from activities authorized pursuant to Chapter 6 (commencing  
7 with Section 1600) within the regional conservation-~~framework~~  
8 *investment strategy* area to less than substantial.

9 (3) To mitigate significant effects on the environment within  
10 the regional conservation-~~framework~~ *investment strategy* area  
11 pursuant to the California Environmental Quality Act (Division  
12 13 (commencing with Section 21000) of the Public Resources  
13 Code) and Guidelines for Implementation of the California  
14 Environmental Quality Act (Chapter 3 (commencing with Section  
15 15000) of Division 6 of Title 14 of the California Code of  
16 Regulations).

17 (d) The department shall ensure the long-term durability of a  
18 habitat enhancement action. If a habitat enhancement action is  
19 used to create one or more mitigation credits pursuant to this  
20 section, the habitat enhancement action shall remain in effect at  
21 least until the site of the environmental impact is returned to  
22 preimpact ecological conditions.

23 (e) To create mitigation credits pursuant to this section, a person  
24 or entity, including a state or local agency, shall enter into a  
25 mitigation credit agreement with the department. The mitigation  
26 credit agreement shall ~~establish~~ *identify* the type and number of  
27 mitigation credits ~~proposed to be created by the conservation action~~  
28 ~~or habitat enhancement action~~ and the terms and conditions under  
29 which the mitigation credits may be used. Mitigation credits shall  
30 not be created on a site that has already been permanently protected  
31 and has been used, or is currently in use, to fulfill compensatory  
32 mitigation requirements for one or more projects. The person or  
33 entity may create and use, sell, or otherwise transfer the mitigation  
34 credits upon department approval that the credits have been created  
35 in accordance with the agreement. To enter into a mitigation credit  
36 agreement with the department, a person or entity shall submit a  
37 draft mitigation credit agreement to the department for its review,  
38 revision, and approval. The department may enter into a mitigation  
39 credit agreement if it determines that the mitigation credit  
40 agreement does all of the following:

1 (1) Provides contact information for, and establishes the  
2 qualifications of, the person or entity entering into the agreement,  
3 the entity that will manage the site of the conservation action or  
4 habitat enhancement action, and any contractors or consultants.

5 (2) Fully describes the proposed conservation actions or habitat  
6 enhancement actions and explains how, and to what extent, they  
7 will measurably advance conservation objectives of the regional  
8 conservation ~~framework~~ *investment strategy* that have not yet been  
9 achieved.

10 (3) Identifies the location of the conservation actions or habitat  
11 enhancement actions, including a location map, address, and size  
12 of the site where the proposed conservation action or habitat  
13 enhancement action will be implemented.

14 (4) Provides color aerial and ground-level photographs that  
15 reflect current conditions on the site and surrounding properties.

16 (5) Explains how the mitigation credits will be created,  
17 including, but not limited to, information regarding proposed  
18 ownership arrangements, long-term management strategy, and any  
19 phases of implementation.

20 (6) Identifies mitigation banks and conservation banks approved  
21 by the department as a mitigation alternative and explains how  
22 available mitigation credits at those banks will be purchased or  
23 used in combination with the mitigation credits created under the  
24 mitigation credit agreement or, if those available mitigation credits  
25 will not be purchased or used, why they will not be purchased or  
26 used.

27 (7) Includes a natural resources evaluation that documents biotic  
28 and abiotic baseline conditions, including past, current, and  
29 adjacent land uses, vegetation types, species information,  
30 topography, hydrology, and soil types.

31 (8) Identifies public lands and permanently protected lands in  
32 the vicinity of the conservation actions or habitat enhancement  
33 actions.

34 (9) Fully describes the proposed type and quantity of mitigation  
35 credits and the supporting rationale. *Mitigation credits created*  
36 *pursuant to this section shall directly correlate to the focal species*  
37 *and other species, habitat, and other natural resources protected*  
38 *by the conservation actions or habitat enhancement actions.*

39 (10) Identifies metrics or indicators by which the proposed  
40 conservation action or habitat enhancement action's contribution

1 to achieving the ~~framework's~~ *strategy's* conservation goals and  
2 objectives can feasibly be measured with existing technology. The  
3 net ecological gain from the implementation of conservation actions  
4 and habitat enhancement actions that include habitat restoration  
5 shall be reported using consistent metrics that measure the  
6 increment of gain in the area and quality of habitat or other natural  
7 resource values compared to baseline conditions described in the  
8 regional conservation ~~framework~~, *investment strategy*, and  
9 measures the increment of gain in relation to the regional  
10 conservation ~~framework's~~ *investment strategy's* conservation  
11 objectives.

12 (11) Describes the proposed landownership of the site or sites  
13 of the conservation actions or habitat enhancement actions.

14 (12) Includes a template conservation easement, or other  
15 instrument providing for perpetual protection of land in a manner  
16 ~~substantially similar to a conservation easement approved in~~  
17 ~~advance in writing by the department,~~ *consistent with approved*  
18 *natural community conservation plans within the area of the*  
19 *applicable regional conservation investment strategy*, for the sites  
20 of any conservation action and an explanation of how the long-term  
21 durability of the sites of any habitat enhancement actions will be  
22 ensured.

23 (13) Ensures that the implementation of the conservation action  
24 or habitat enhancement action will be adequately funded and that  
25 long-term protection and management of the site will be funded  
26 in accordance with Chapter 4.6 (commencing with Section 65965)  
27 of Division 1 of Title 7 of the Government Code or, if a state  
28 agency proposed to enter into a mitigation credit agreement, other  
29 comparable funding mechanism approved by the ~~department.~~  
30 *department in accordance with an adopted statewide policy*  
31 *regarding funding for long-term management and operations of*  
32 *mitigation sites.*

33 (14) Includes a template monitoring and long-term adaptive  
34 management plan.

35 (15) Explains the terms and conditions under which the proposed  
36 mitigation credits may be sold or otherwise transferred and how  
37 the proposed mitigation credits will be accounted for, including  
38 the specific methods proposed for reporting and maintaining a  
39 record of credit creation, release, and use, sale, or transfer.

40 (16) Includes enforcement provisions.

(17) Ensures that, for each site on which the conservation actions or habitat enhancement actions will be implemented, ~~the following information consistent with, pursuant to this chapter, the information required for a mitigation bank in paragraph (2) of subdivision (b) of Section 1798 and subparagraphs (B) to (H), inclusive, of paragraph (2) of subdivision (a) of Section 1798.5~~ shall be prepared and submitted to the department for review for adequacy and approval prior to ~~implementation:~~ implementation.

~~(A) Site-specific conservation objectives of the conservation actions or habitat enhancement actions and how they reflect a measurable advancement of the conservation objectives of the regional conservation framework.~~

~~(B) Preliminary natural resources surveys by a qualified biologist that document biotic and abiotic baseline conditions, including past, current, and adjacent land uses, vegetation types, species information, topography, hydrology, and soil types.~~

~~(C) For conservation actions, the conservation easement, or other instrument providing for perpetual protection of land in a manner substantially similar to a conservation easement approved in advance in writing by the department, that will be used to permanently protect the site, and for habitat enhancement actions, the instrument that will be used to ensure their long-term durability.~~

~~(D) A management plan that includes the short-term and long-term management actions necessary to ensure that the conservation actions or habitat enhancement actions achieve their site-specific conservation objectives.~~

~~(E) If mitigation credits are proposed to be created from habitat enhancement actions or conservation actions that include restoration of ecological resources, detailed plans, including as-built designs and ecological performance standards.~~

~~(F) A property analysis record or other comparable economic analysis of the funding necessary to support site-specific maintenance activities, such as monitoring and reporting, in perpetuity.~~

~~(G) The sources for, and the terms under which, the endowment, or for state agencies other comparable funding mechanism approved by the department, for long-term protection, management, and enforcement will be funded.~~

~~(H) A current preliminary report covering the site of the conservation actions or habitat enhancement actions that identifies~~

1 the owner of the fee simple title and shows all liens, easements,  
2 and other encumbrances and depicts all relevant property lines,  
3 easements, dedications, and other features. Copies of  
4 documentation of any encumbrances that may conflict with the  
5 conservation objectives of the proposed conservation actions or  
6 habitat enhancement actions shall be included with the preliminary  
7 title report.

8 (I) A declaration of whether or not the proposed site has been  
9 or is being used as mitigation, is designated or dedicated for park  
10 or open-space use, or designated for purposes that may be  
11 inconsistent with habitat preservation.

12 (J) Details of any public funding received for acquisition or  
13 restoration of, or other purposes related to, the proposed site.

14 (K) A phase I environmental site assessment of the site dated  
15 not more than six months prior to the date of submission to the  
16 department. This assessment shall be performed in accordance  
17 with the ASTM International Standard E1527-05 "Standard  
18 Practice for Environmental Site Assessments: Phase I  
19 Environmental Site Assessment Process" or any successive ASTM  
20 International standard active at the time of the assessment.

21 (18) Includes a proposed credit ledger and credit release  
22 schedule that meets the requirements of subdivision (f).

23 (f) (1) The release of mitigation credits for use, sale, or transfer  
24 under a mitigation credit agreement shall require the department's  
25 approval in accordance with this subdivision.

26 (2) The release of mitigation credits shall be tied to  
27 performance-based milestones and achievement of ecological  
28 performance standards. The credit release schedule for each  
29 mitigation credit agreement shall reserve a substantial share of the  
30 total credits for release after those ecological performance standards  
31 are fully achieved. Performance-based milestones ~~may~~ *shall*  
32 include, but are not be limited to, the following:

33 (A) Recording a conservation easement ~~or establishing perpetual~~  
34 ~~protection in a manner substantially similar to a conservation~~  
35 ~~easement and approved in advance in writing by the department~~  
36 *consistent with approved natural community conservation plans*  
37 *within the area of the applicable regional conservation investment*  
38 *strategy* on the site of a conservation action, or putting into place  
39 measures that ensure the long-term durability of a habitat  
40 enhancement action in accordance with subdivision (d).

1 (B) Completing construction of a habitat restoration action.

2 (C) Achieving temporal ecological performance standards for  
3 habitat restoration, such as standards established for one year, three  
4 years, or five years following the initiation of habitat restoration.

5 (D) Fully achieving ecological performance standards.

6 (3) The terms of the credit release schedule shall be specified  
7 in the mitigation credit agreement. When conservation actions and  
8 habitat enhancement actions are implemented and meet the  
9 performance-based milestones specified in the credit release  
10 schedule, credits shall be created in accordance with the credit  
11 release schedule. If a conservation action or habitat enhancement  
12 action does not meet performance-based milestones, the department  
13 may suspend the release of credits, reduce the number of credits,  
14 or otherwise modify the credit release schedule accordingly.

15 (4) In order for mitigation credits to be released, the person or  
16 entity that has entered into a mitigation credit agreement shall  
17 demonstrate to the department that the appropriate  
18 performance-based milestones for credit release have been met.  
19 The department shall determine whether the milestones have been  
20 met and the credits may be released.

21 (g) (1) Mitigation credit agreements may be used to establish  
22 the terms and conditions under which mitigation credits can be  
23 created by projects that improve wildlife habitat, or that address  
24 stressors to wildlife, to an extent that quantifiably exceeds  
25 compensatory mitigation requirements established by the  
26 department for those projects pursuant to Chapter 6 (commencing  
27 with Section 1600) or Chapter 1.5 (commencing with Section  
28 2050) of Division 3. Those projects may include, but are not limited  
29 to, the construction of setback levees that result in the creation of  
30 more floodplain or riparian habitat than is required to compensate  
31 for construction impacts or the construction of transportation  
32 facility improvements that remove barriers to fish or wildlife  
33 movement and thereby improve the quality of habitat or address  
34 stressors to wildlife to a greater extent than is required to  
35 compensate for construction impacts. For those projects, the project  
36 proponent may submit a draft mitigation credit agreement that  
37 proposes the terms and conditions under which mitigation credits  
38 may be created and used by or in conjunction with those projects  
39 to the department for its review, revision, and approval. The  
40 submission may occur concurrently with, or after, an application

submitted pursuant to Chapter 1.5 (commencing with Section 2050) of Division 3 or a notice submitted pursuant to Chapter 6 (commencing with Section 1600) or may occur after the application or notice is submitted. Where a draft mitigation agreement is submitted concurrently with the application or notice, the department shall review the draft mitigation credit agreement concurrently with its review of the application or notice and shall, to the maximum extent practicable, complete its review of both the notice or application and the draft agreement concurrently.

(2) Mitigation credit agreements submitted to the department pursuant to this subdivision may comply with the requirements of subdivision (f) with a credit release schedule related to construction of the project that will improve wildlife habitat, or will address stressors to wildlife, to an extent that exceeds compensatory mitigation requirements quantifiably. For those projects, construction of the project may be a performance-based milestone required by paragraph (2) of subdivision (f).

(h) Nothing in this chapter is intended to limit or impose additional conditions on the creation or sale of mitigation credits by a conservation bank or mitigation bank approved by the department pursuant to Chapter 7.9 (commencing with Section 1797).

(i) The creation of mitigation credits pursuant to this section from a conservation action or habitat enhancement action implemented within the plan area of an approved natural community conservation plan shall not duplicate or replace mitigation requirements set forth in the natural community conservation plan and shall require the advance written approval of the plan's implementing entity. Mitigation credits created pursuant to this section may be used for covered activities under an approved natural community conservation plan only in accordance with the requirements of the plan. *Individuals and entities eligible for coverage as a participating special entity under an approved natural community conservation plan may use mitigation credits created pursuant to this section only if the plan's implementing entity declines to extend coverage to the covered activity proposed by the eligible individual or entity.*

(j) The department shall make project mitigation credit and release information publicly available on the department's Internet Web site.

1 1857. The department ~~may~~ *shall* collect fees or other  
2 *compensation* from a person or entity that proposes to enter into  
3 a mitigation credit agreement, and from a public agency that  
4 proposes a regional conservation ~~framework~~ *investment strategy*  
5 or a regional conservation assessment, to pay for all or a portion  
6 of the department's costs relating to the mitigation credit  
7 agreement, proposed ~~framework~~, *strategy*, or proposed assessment.

8 1858. The department may adopt guidelines and criteria to aid  
9 in the implementation of this chapter. Chapter 3.5 (commencing  
10 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
11 Government Code does not apply to the development, adoption,  
12 or amendment of guidelines or criteria pursuant to this section.  
13 These guidelines and criteria shall be posted on the department's  
14 Internet Web site.

15 1859. (a) The department shall submit a report to the  
16 Legislature on or before January 1, 2020, regarding the  
17 implementation of this chapter.

18 (b) The report required to be submitted pursuant to subdivision  
19 (a) shall be submitted in compliance with Section 9795 of the  
20 Government Code.

21 1860. *The department may partner with California*  
22 *Infrastructure and Economic Development Bank to finance the*  
23 *development of advance mitigation credits if needed.*

24 1861. *Nothing in this chapter supersedes, limits, or otherwise*  
25 *modifies the Sacramento-San Joaquin Delta Reform Act of 2009*  
26 *(Division 35 (commencing with Section 85000) of the Water Code)*  
27 *or Division 22.3 (commencing with Section 32300) of the Public*  
28 *Resources Code.*

29 ~~1860.~~

30 1862. The department *shall approve no more than 15 regional*  
31 *conservation investment strategies before January 1, 2020. The*  
32 *department shall not approve a regional conservation ~~framework~~*  
33 *investment strategy or regional conservation assessment pursuant*  
34 *to this chapter on or after January 1, 2020, and shall not enter into*  
35 *a mitigation credit agreement pursuant to this chapter on or after*  
36 *January 1, 2020.*